

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 645
FINAL READING

Introduced by Brashear, 4; Dw. Pedersen, 39

Read first time January 19, 2005

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to telecommunications and technology; to amend
2 sections 25-2602.01 and 86-575, Revised Statutes
3 Supplement, 2004; to define terms; to prohibit agencies,
4 political subdivisions, and public power suppliers from
5 providing certain technology-based services as
6 prescribed; to create a task force; to eliminate
7 provisions relating to county telephone systems; to
8 harmonize provisions; to repeal the original sections;
9 and to outright repeal sections 86-581 to 86-592, Revised
10 Statutes Supplement, 2004.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 7 of this act:

2 (1) Broadband services means the offering of a capability
3 for high-speed broadband telecommunications capability at a speed
4 or bandwidth in excess of two hundred kilobits per second that
5 enables users to originate and receive high-quality voice, data,
6 and video telecommunications using any technology;

7 (2) Internet services means the offering of Internet
8 service provider services, providing voice over Internet protocol
9 services, or providing Internet protocol-based video services;

10 (3) Public power supplier means a public power district,
11 a public power and irrigation district, a municipal electric
12 system, a joint entity formed under the Interlocal Cooperation Act,
13 a joint public agency formed under the Joint Public Agency Act, an
14 agency formed under the Municipal Cooperative Financing Act, or any
15 other governmental entity providing electric service;

16 (4) Telecommunications has the same meaning as
17 telecommunications defined in section 86-117;

18 (5) Telecommunications services has the same meaning as
19 telecommunications service defined in section 86-121; and

20 (6) Video services means the delivery of any subscription
21 video service except those described in section 70-625.

22 Sec. 2. (1) Except as provided in the Educational
23 Service Units Act and sections 79-1319, 81-1120.01 to 81-1120.28,
24 85-401 to 85-418, 85-1501 to 85-1542, and 86-575, an agency or
25 political subdivision of the state that is not a public power
26 supplier shall not provide on a retail or wholesale basis any
27 broadband services, Internet services, telecommunications services,
28 or video services.

1 (2) The provisions of subsection (1) of this section
2 shall not apply to services which an agency or political
3 subdivision of the state was authorized to provide and was
4 providing prior to January 1, 2005.

5 Sec. 3. (1) A public power supplier shall not provide on
6 a retail basis any broadband services, Internet services,
7 telecommunications services, or video services.

8 (2) The provisions of subsection (1) of this section
9 shall not apply to services which a public power supplier was
10 authorized to provide and was providing prior to January 1, 2005.

11 Sec. 4. (1) A public power supplier shall not provide on
12 a wholesale basis any broadband services, Internet services,
13 telecommunications services, or video services.

14 (2) This section terminates on December 31, 2007.

15 Sec. 5. (1) For purposes of sections 2 to 4 of this act,
16 providing a service on a retail or wholesale basis shall not
17 include an agency or political subdivision of the state, whether or
18 not a public power supplier, deploying or utilizing broadband
19 services, Internet services, telecommunications services, or video
20 services, for its own use either individually or jointly through
21 the Interlocal Cooperation Act, the Joint Public Agency Act, or the
22 Municipal Cooperative Financing Act for the internal use and
23 purpose of the agency, political subdivision, or public power
24 supplier or to carry out the public purposes of the agency,
25 political subdivision, or public power supplier.

26 (2) Nothing in sections 1 to 7 of this act prohibits or
27 restricts the ability of an agency, political subdivision, or
28 public power supplier from deploying or utilizing broadband

1 services, Internet services, telecommunications services, or video
2 services for the internal use and purpose of the agency, political
3 subdivision, or public power supplier, or to carry out the public
4 purposes of the agency, political subdivision, or public power
5 supplier.

6 Sec. 6. Except as otherwise provided in sections 3 and 4
7 of this act, nothing in sections 1 to 7 of this act shall be
8 construed to restrict or expand any authority of a public power
9 supplier as that authority existed prior to the effective date of
10 this act.

11 Sec. 7. (1) The Broadband Services Task Force is
12 created. The members shall be appointed as follows:

13 (a) Three members appointed by the Executive Board of the
14 Legislative Council;

15 (b) Six members appointed by the Governor, of whom one
16 member shall be appointed from each congressional district and
17 shall represent consumers and three members shall be appointed on
18 an at-large basis;

19 (c) Three members of the Public Service Commission;

20 (d) Three members of the Nebraska Power Review Board or
21 their designees; and

22 (e) Three members of the Nebraska Information Technology
23 Commission or their designees.

24 (2) Appointments under this section shall be completed
25 within thirty days after the effective date of this act and
26 reported to the Executive Board of the Legislative Council. The
27 chairperson of the executive board shall convene the first meeting
28 of the task force within forty-five days after the appointments are

1 reported, and the task force shall select a chairperson at such
2 time.

3 (3) On behalf of the task force, the Executive Board of
4 the Legislative Council shall, in consultation with the task force,
5 contract for the services of a meeting facilitator and such other
6 assistance as the executive board, in consultation with the task
7 force, deems necessary within the limits of the funds appropriated.
8 In making its selection of a meeting facilitator, the executive
9 board shall consider experience in the areas of telecommunications
10 and public power.

11 (4) Issues to be studied by the task force shall include,
12 but are not limited to:

13 (a) The implications upon competition of agencies or
14 political subdivisions of the state or public power suppliers
15 offering infrastructure access for broadband services, Internet
16 services, telecommunications services, and video services and
17 private sector investment in networks for the provision of such
18 services;

19 (b) The need and necessity for the provision of wholesale
20 broadband services, Internet services, telecommunications services,
21 or video services by agencies or political subdivisions of the
22 state and public power suppliers;

23 (c) Issues regarding the establishment of fair and
24 equitable requirements for the regulation and taxation of the
25 provision of wholesale broadband services, Internet services,
26 telecommunications services, and video services by agencies or
27 political subdivisions of the state and public power suppliers;

28 (d) An assessment of the extent and availability of

1 public power infrastructure in the state and an evaluation of how
2 such infrastructure could be utilized to enhance the provision of
3 broadband services, Internet services, telecommunications services,
4 and video services to consumers and businesses and the feasibility
5 of using such technology in all regions of the state;

6 (e) A determination of how parity could be established
7 for competing interests in the provision of broadband services,
8 Internet services, telecommunications services, and video services,
9 including, but not limited to, the amount of property taxes paid,
10 income taxes, in lieu of tax payments paid, gross receipts taxes,
11 sales taxes paid, tax credits and funds provided under current
12 federal and state laws, and financing capabilities, including
13 shareholder equity;

14 (f) An evaluation of the statutory and regulatory
15 frameworks of other states' publicly owned utilities as they relate
16 to providing broadband services, Internet services,
17 telecommunications services, and video services; and

18 (g) An analysis of the geographic areas in which
19 broadband services, Internet services, telecommunications services,
20 and video services are being offered in the state, the degree of
21 regulation and competition with respect to each such service within
22 such geographic areas, and the implications of permitting agencies,
23 political subdivisions, and public power suppliers to provide such
24 services on the geographic reach of such services and the degree of
25 competition in such geographic areas.

26 (5) The task force shall study the issues described in
27 subsection (4) of this section, identify options for the resolution
28 of such issues, and make recommendations to the Legislature and the

1 Governor relating to any policy changes the task force deems
2 desirable. The task force shall complete its work by December 1,
3 2006, and submit its report to the Legislature, the Governor, the
4 Natural Resources Committee of the Legislature, and the
5 Transportation and Telecommunications Committee of the Legislature
6 by such date.

7 (6) This section terminates on December 1, 2006.

8 Sec. 8. Section 25-2602.01, Revised Statutes Supplement,
9 2004, is amended to read:

10 25-2602.01. (a) A written agreement to submit any
11 existing controversy to arbitration is valid, enforceable, and
12 irrevocable except upon such grounds as exist at law or in equity
13 for the revocation of any contract.

14 (b) A provision in a written contract to submit to
15 arbitration any controversy thereafter arising between the parties
16 is valid, enforceable, and irrevocable, except upon such grounds as
17 exist at law or in equity for the revocation of any contract, if
18 the provision is entered into voluntarily and willingly.

19 (c) The Uniform Arbitration Act applies to arbitration
20 agreements between employers and employees or between their
21 respective representatives.

22 (d) Contract provisions agreed to by the parties to a
23 contract control over contrary provisions of the act other than
24 subsections (e) and (f) of this section.

25 (e) Subsections (a) and (b) of this section do not apply
26 to a claim for workers' compensation.

27 (f) Subsection (b) of this section does not apply to:

28 (1) A claim arising out of personal injury based on tort;

1 (2) A claim under the Nebraska Fair Employment Practice
2 Act;

3 (3) Any agreement between parties covered by sections
4 60-1401.01 to 60-1440; and

5 (4) Except as provided in section 44-811, any agreement
6 concerning or relating to an insurance policy other than a contract
7 between insurance companies including a reinsurance contract.

8 (g) When a conflict exists, the Uniform Arbitration Act
9 shall not apply to the Uniform Act on Interstate Arbitration and
10 Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to
11 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329. ~~7 and 86-588~~
12 ~~to 86-590.~~

13 Sec. 9. Section 86-575, Revised Statutes Supplement,
14 2004, is amended to read:

15 86-575. (1) Any agency or political subdivision of the
16 state may:

17 (a) Own dark fiber;

18 (b) Sell dark fiber pursuant to section 86-576; and

19 (c) Lease dark fiber pursuant to section 86-577.

20 (2) ~~No agency or political subdivision of the state shall~~
21 ~~provide telecommunications services for a fee, except as authorized~~
22 ~~in sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418,~~
23 ~~and 85-1501 to 85-1542, or be issued a certificate of convenience~~
24 ~~and necessity as a telecommunications common carrier or a permit as~~
25 ~~a telecommunications contract carrier.~~ Any agency or political
26 subdivision which sells or leases its dark fiber pursuant to
27 sections 86-574 to 86-578 shall not be deemed to be providing
28 telecommunications services ~~for a fee~~ as defined in section 1 of

1 this act.

2 Sec. 10. Original sections 25-2602.01 and 86-575,
3 Revised Statutes Supplement, 2004, are repealed.

4 Sec. 11. The following sections are outright repealed:
5 Sections 86-581 to 86-592, Revised Statutes Supplement, 2004.